SECTION II.—OWNERSHIP OF PUBLIC LINES OF COMMUNICATION (LAND AND WATER).

§ 1.—*Roads and Railway lines.*

It will be desirable next briefly to notice the right of ownership in lands occupied by canals and other public works, by railways and public roads[1].

Railways made and worked by Companies are owned by the Company, but the land may have been acquired by public authority under the Land Acquisition Act, and in that case there is a special agreement between Government and the Company as to the terms of holding[2]. This agreement secures, with the force of law, the terms on which the public will be entitled to use the railway or other works.

Public roads are distinguished from mere rights of way which one man (or several, or a community) may possess over private property. The enjoyment of the use of a public road is a right which belongs to the public at large.

The road itself belongs to Government, as is clear from the general law. I pass over the technical question as to whether the possession of the Government on behalf of the public is not "adverse" and so becomes prescriptive in the course of years; and here merely observe that Government exercises, by legislation, a right to regulate the use of all such public ways. It enacts

[1] The Bombay Code (section 37) specifically declares that all public roads, lanes, paths and bridges, ditches, dykes, fences on or beside the same, the bed of the sea, and of harbours and creeks below high-water mark (*i.e.*, the highest point of ordinary spring-tide at any season of the year), the beds of rivers, streams, nallas, lakes, tanks, canals, water-courses, and all standing and flowing water, and *all lands* wherever situated which are not the property of individuals or aggregates of persons legally capable of holding property, are the property of Government, and may be disposed of by Government officers, subject to rights-of-way and other rights (not being property rights) subsisting on it.

[2] Act X of 1870, section 49. The agreement has to be published in the *Gazette of India* and in the local *Gazette*.

Railway Acts[3] and laws for levying tolls on roads[4]. Many roads are old Imperial lines, which have been public property for generations past; and whenever a new road or State Railway is made, the land is acquired by public authority and paid for out of public revenues, so that no possible question can arise about it. I may also mention that it is a well-known principle of law as establishing the State ownership of public roads, that *no private individual* can bring a suit to remove an unauthorised obstruction, even though he own land on both sides of the road; unless, indeed, he can show some special damage to himself over and above the general inconvenience[5].

Bridges constructed at the public expense over rivers, &c., are evidently part of the road and governed by the same principle.

§ 2.—*Canals and the right to water.*

The beds of canals and their inspection roads, spoil banks, &c., are all on land which was either Government property under the former Native rulers or has been expressly acquired in our own times. The preamble to the present North Indian Canal Act (VIII of 1873)[6] therefore contents itself with asserting the right of Government to use and control the water of all rivers and streams flowing in natural channels, and of all lakes and natural collections of still water[7]. The power to remove obstructions in rivers is also

[3] Act IV of 1879.

[4] Acts VIII of 1851 and XV of 1864.

[5] See Civil Case No. 72, "Panjáb Record," 1877. The whole question has been exhaustively examined, and all English and other authorities reviewed, in *Satku* v. *Ibrahím Aga*, I. L. R. Bombay series, II, 457.

[6] See also Bengal Act VI of 1876, and Canal Acts of Bombay and Madras.

[7] This is an improvement on the former Act (now repealed) XXX of 1871, which declared a right "*to all rivers and streams.*" Such a declaration is not very clear. As regards its scope, does it include the soil, or the water, or both? Now, in any case of a great river (not being a mere creek or stream which may traverse a man's estate) as long as the river is flowing, the bed generally belongs to Government, because the soil of it never can, in the nature of things, have become private property, or been recognised as such by a settlement or otherwise. The Government may then deal with the bed by constructing bridges (sinking shafts into the soil for